

Implementation of the Obligations and Responsibilities of Notaries in Providing Social Services According to Their Position in the City of Cirebon

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Abstract. *This study aims to determine and analyze the Implementation of Notary Obligations and Responsibilities in Providing Social Services According to Their Position in the City of Cirebon and analyze what obstacles are encountered when implementing Notary Obligations and Responsibilities in Providing Social Services. This type of research is an empirical legal research. The approach method in this study is a Qualitative Approach. The types and sources of data in this study are primary and secondary data obtained through interviews and literature studies. The analysis in this study is Descriptive Analytical. Based on the results of the study, it was concluded that the legal regulations regarding notary obligations in providing social services to the poor are contained in Article 37 paragraph (1) UUJN and Article 3 paragraph (7) of the Notary Code of Ethics. In practice, Notary Lia Amalia, SH, has carried out her obligations in accordance with the provisions of the Notary Law, legal services are not only provided to poor clients but also provided for foundation activities, activities in the social, humanitarian and religious fields. Notaries assess the poor based on humanity and conscience. Meanwhile, the obstacles encountered are that the provisions in Article 37 paragraph (1) of the UUJN do not explain in detail the procedures and who is said to be able to receive legal assistance to determine whether someone is eligible or can be exempted from fees, and there is still a lot of stigma in society regarding the services of a Notary as being very expensive.*

Keywords: *Poor People; Notary; Responsibility; Social Services; Obligations.*

1. Introduction

Who is a Notary, according to Law Number 02 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, it is stated that a Notary is a public official who has the authority to make authentic deeds and other authorities². In general, a Notary is a person who has special powers as a legal subject, in their profession they have the power to validate various important documents such as agreements, deeds, wills, contracts and so on. Deeds made by a notary can be the legal basis for the status of property, rights and obligations of a person. Mistakes by a Notary in making a deed can result in the revocation of a person's rights or become a burden for someone for an obligation. A Notary is one of the public officials whose position is very much needed in today's era. This modern era which is always developing and developing rapidly where society no longer knows agreements based on a sense of trust in each other as they used to know. Every agreement made by the community will definitely lead to a notary as a means of validating the agreement they want to do, that is what causes the position of a notary to become increasingly important in times like today.

Like other public officials, Notaries also have their own authority that is not possessed by other public officials. In addition to their authority, Notaries also have obligations and prohibitions that they must comply with in carrying out their duties and positions, the authority obtained by a position has its original source. As in general, based on administrative law, authority can be obtained through Attribution, Delegation, or Mandate³. Based on the Notary Position Law, Notaries are public officials who obtain authority through attribution, because this authority is created and granted by the Notary Position Law. The authority of a Notary as a public official in question includes 4 (four) things, namely:

1. The notary must have authority as far as the deed being made is concerned.
2. A notary must have authority regarding the persons for whose benefit the deed is made.
3. The notary must have authority regarding the place where the deed is made.
4. The notary must have authority regarding the time of making the deed.

¹Erniwati "Apa Itu Notaris", <https://ntb.kemenkumham.go.id/layanan-publik/pelayanan-hukum-umum/mpw-dan-mpd-notaris/apa-itu-notaris/> accessed on May 24, 2024 at 23.00.

The authority of a Notary is regulated in Article 15 of the Notary Law, which is the limit of the Notary's authority in carrying out his duties and position.²The task of a Notary is to regulate in writing and authentically the legal relationship between the parties who have entered into an agreement by consensus using the services of a notary, which in essence provides legal certainty for the agreement that has been agreed upon. Here it is clear that a notary is a position free from the influence of any pressure, but has strong legal certainty, therefore in every making of a certain grosse deed always includes the sentence "For Justice Based on the Almighty God".

The important position of a Notary in the life of society makes the process of someone who wants to become a skilled and professional Notary very important. Therefore, in notarial education, notary ethics must also be considered. So in this case it is emphasized that a professional education without education regarding responsibility and professional ethics is incomplete. In the field of law, technical skills that ignore aspects concerning the responsibility entrusted to him and his profession in general, as well as the values and ethical standards that must be guidelines in carrying out his profession, will only become skilled craftsmen in the field of law and his profession.³According to Article 1 point 1 of Law Number 30 of 2004 in conjunction with Law Number 2 of 2014, it states that the main task of a Notary is to make authentic deeds. According to Article 1868 of the Civil Code (hereinafter referred to as the Civil Code), an authentic deed is a deed in a form determined by law, made by or before authorized public officials in the place where the deed is made. This gives the understanding that a Notary is authorized by law to create absolute evidence, in the sense that what is stated in the authentic deed is basically considered true.⁴

The Notary Code of Ethics is under the Regulation of the Minister of Law and Human Rights Number 62 of 2016 concerning the Regulation of the Minister of Law and Human Rights Number 25 of 2014 concerning the Requirements and Procedures for the Appointment, Dismissal, and Extension of the Position of Notaries. The Notary Code of Ethics is a moral rule determined by the Indonesian

²Sovia Hasanah "Pengertian Atribusi, Delegasi, dan Mandat", <https://www.hukumonline.com/klinik/a/pengertian-atribusi--delegasi-dan-mandat-1t5816ab6ea74a7/>

³Darji Darmodiharjo & Shidarta, (2004), *Pokok-pokok Filsafat Hukum, Apa dan Bagaimana Filsafat Hukum Indonesia*, Jakarta : Gramedia Pustaka Utama. p. 265.

⁴R. Soegondo Notodisoerjo. (1993), *Hukum Notariat di Indonesia Suatu Penjelasan*, Jakarta : Raja Grafindo Persada. p. 8.

⁶Komar Andasmita, (1981), *Notaris Dengan Sejarah, Peranan, Tugas Kewajiban, Rahasia Jabatannya*, Bandung : Sumur. p. 14.

Notary Association (INI) based on the decision of the association's congress and/or which is determined and regulated in the laws and regulations governing the notary profession's code of ethics, must be obeyed by every member bound by the association. Notaries in carrying out their profession which provides services to the community should act in accordance with applicable regulations. Notaries have an obligation to guarantee the truth of the deeds they make, therefore Notaries must be more sensitive, honest and fair in making a deed. With the existence of these laws and regulations and the Code of Ethics, it is hoped that Notaries in Cirebon City can implement the Notary Code of Ethics in order to improve the quality of their services to the community who need their services. The quality of service is not only assessed from the compliance of the Notary to obey and enforce the applicable regulations and code of ethics, but the most important thing here is the professional ability possessed by a Notary as follows:⁵

1. Refers to honesty and not only to second or third parties, but also to oneself.
2. Must refer to expertise supported by high knowledge and experience.
3. Have moral integrity, in the sense that all moral considerations must underlie professional duties.
4. In carrying out his duties and office, a Notary must not be driven solely by monetary considerations, and must not be discriminatory. A professional Notary must uphold the code of professional ethics. harmonized with the values of society, values of politeness and religion that grow in society.

2. Research Methods

The research approach method used in this thesis is the sociological legal research method. Sociological legal research emphasizes research that aims to obtain empirical legal knowledge by going directly to the object.¹¹ The specification of this research uses descriptive analysis, namely research that in addition to providing a description, writing and reporting an object or an event will also draw general conclusions from the problems discussed. Data sources come from primary data and secondary data. Data collection methods include interviews, Document Studies or Library Materials. The data analysis method used in analyzing data is the qualitative analysis of the interactive model as proposed by Miles and Huberman.

⁵E. Sumaryono, (1995), *Etika Profesi Hukum*, Yogyakarta : Kanisius. p. 35.

3. Results and Discussion

3.1. How is the Implementation of Notary's Obligations and Responsibilities in Providing Social Services According to Their Position in the City of Cirebon?

Notary is a profession that has its own characteristics compared to other professions. others, such as: Judges, Prosecutors, and Advocates. Where the task of a Notary is to help people who have legal problems. Article 1 Paragraph (1) UUJN explains that: "A Notary is a public official who is authorized to make authentic deeds and other authorities as referred to in this Law or based on other Laws." Based on these provisions, it can be seen that a Notary is a position that is authorized to make authentic deeds regarding all acts as long as the authority for the legal act is not transferred to another official by Law.

According to Gandasubrata, a notary is a public official appointed by the government, including law enforcement elements who provide services to the community.⁶

The position of a Notary as a public official is an honorable position given by the state through law to people it trusts, because the position of a Notary cannot be placed in the executive, legislative or judicial institutions.

The existence of a notary institution is required by legal regulations with the aim of serving and assisting the community who need authentic evidence.⁷

Theoretically, an authentic deed is a written document or deed that is made intentionally or made officially for proof. According to its form, an authentic deed is divided into oral and written forms and in a written agreement it is divided into authentic deeds and private deeds.

In Article 1868 of the Civil Code and Article 165 of the HIR it is explained that: "A deed in the form determined by law is made by or in the presence of public officials who have authority for that purpose in the place where the deed is made."

Authentic deeds made by a Notary consist of 2 types, namely release deeds and partij deeds. Release deeds are deeds made by a Notary as a public official that contain authentic descriptions of all events or incidents seen, experienced, and

⁶H.R. Purwoto S. Gandasubrata, (1998), *Renungan Hukum*, Jakarta : IKAHI Cabang Mahkamah Agung RI. p.484

⁷Sholikhah Etin, "Perlindungan Hukum Terhadap Jabatan Notaris Yang Diduga Melakukan Malpraktek Dalam Proses Pembuatan Akta Otentik", *Jurnal Akta*, Vol 4 No 1, 2017, p. 5

witnessed by the Notary himself. Release deeds are deeds made in the form of minutes, including the deed of a General Meeting of Shareholders (GMS) of a company.

According to GHS Lumban Tobing, a Deed of Release is a deed containing a description of the Notary which is seen and witnessed by the Notary himself at the request of the parties so that the actions or deeds of the parties are stated in the form of a Notarial deed.⁸

According to AAAndi Prayitno, a release deed is a deed that records all events seen, heard and felt from the course of the meeting or event being covered.⁹ Meanwhile, according to Herry Susanto, a release deed is a deed made by a Notary as an official which contains written information from the official who made the deed himself and the truth of the contents of the release deed cannot be challenged, except by accusing the deed of being fake.¹⁰

A deed of partij is a deed made before a Notary, namely a deed made based on the information or actions of the parties appearing before the Notary and the information or actions are to be confirmed by the Notary to be made a deed. A deed of partij contains descriptions or information and statements of the parties given or told before the Notary. In a deed of partij, the information from the parties acting as parties in the deed is authentically stated. The deed also contains that the parties appearing or present have stated their specific will as stated in the deed.¹¹

An authentic deed also provides perfect evidence because it does not require the addition of other evidence, as is the case with witnesses. In other words, an authentic deed has the power of proof in appearance, formally and materially, and distinguishes it from a private deed. An authentic deed can legally and strongly prove the existence of a legal relationship between the parties who made it so that legal certainty is created.¹²

The perfect evidentiary power of an authentic deed against both parties, is intended if a dispute arises before a judge regarding something and one party

⁸G. H. S. Lumban Tobing, (1991), *Peraturan Jabatan Notaris*, Jakarta : Erlangga. p. 51.

⁹*Ibid.*, p. 90

¹⁰Herry Susanto, (2010), *Peranan Notaris Dalam Menciptakan Keputusan Dalam Kontrak*, Yogyakarta : UII Press. p. 132.

¹¹G.H.S. Lumban Tobing, *Op.cit*, p. 51.

¹²Dedy Pramono, "Kekuatan Pembuktian Akta yang Dibuat Oleh Notaris Selaku Pejabat Umum Menurut Hukum Acara Perdata di Indonesia", *Jurnal Hukum, Media Neliti*, p. 252

submits an authentic deed, then what is stated in the deed has been considered perfectly proven. If the opposing party denies the truth of the contents of the authentic deed, then he is obliged to prove that the contents of the deed are not true. The Amendment Law to the UUJN states that an authentic deed must be considered valid only if the parties have actually appeared before a public official (Notary) including on the day and date recorded in the deed and explained what was written in the deed.¹³

An authentic deed has the power or evidentiary value which is broadly described as follows:

1. The power of external evidence (uitwendige bewijskracht)

The notarial deed itself has the ability to prove itself as an authentic deed (Article 1875 of the Civil Code). This ability does not exist in a deed under hand, because a deed under hand is only valid if all parties who sign acknowledge the truth of the signature. If a deed appears to be an authentic deed, meaning from the words that come from a public official (notary) then the deed is considered an authentic deed to everyone;

2. The power of formal proof (formale bewijskracht)

A notarial deed must provide formal certainty to prove the truth and certainty regarding the day, date, month, year, time (hour) of the appearance, and the parties appearing, the initials and signatures of the parties/appearers, witnesses and the Notary, as well as proving what was seen, witnessed, heard by the Notary and recording the statements or statements of the parties/appearers.

3. Strength of material evidence (materiele bewijskracht)

The power of proof is the certainty that what is in the deed is valid proof against the parties who made the deed or those who have the rights and is valid for the public, unless there is proof to the contrary (tegenbewijs). This means that not only the reality is proven by an authentic deed, but the contents of the deed are considered proven as true against everyone who orders the deed to be made as proof against him.

A deed made by an official without authority and without the ability to make it or does not meet the requirements is not considered an authentic deed, but only has

¹³Putu Vera Purnama Diana, "Pertanggung Jawaban Notaris Dalam Pembuatan Akta Berdasarkan Pemalsuan Surat Oleh Para Pihak", *Jurnal Imiah Prodi Magister Kenotariatan*, 2017, p. 167.

the force of a private deed if signed by the parties concerned.¹⁴Article 15 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Regulations on the Position of Notaries determines the authority of a Notary, this authority is a limitation that a Notary may not carry out an action outside of this authority.¹⁵

The position or profession of a Notary in making deeds is a position of trust that must be accounted for both legally and ethically. The deeds made by a Notary are authentic deeds, therefore the Notary in making deeds must be careful and always based on the regulations. Making authentic deeds, the Notary must be responsible if the deed he made contains errors or violations that are intentional by the Notary. On the other hand, if the element of error or violation occurs from the parties to the deed, then as long as the Notary exercises his authority according to the regulations, the Notary concerned cannot be held responsible, because the Notary only records what is conveyed by the parties to be stated in the deed.

In line with the applicable principle that anyone who is harmed has the right to file a claim or lawsuit. A lawsuit against a Notary can occur if the issuance of a Notarial deed is not in accordance with the procedure, resulting in a loss.

3.2. How Obstacles and Solutions Concerning the Obligations and Responsibilities of Notaries in Providing Social Services According to Their Position in the City of Cirebon

Legal services in the field of notary are needed by every group of society. The use of notary services by people who are able can be done by giving an honorarium to the Notary. This is the opposite for the poor, namely they can be given an honorarium by the Notary. Differences in economic ability have an impact on the use of Notary services. Basically, Notaries may not refuse any client who comes to see them to carry out legal acts in the field of notary according to the provisions of Article 37 Paragraph (1) of the Notary Law, "Notaries are required to provide free legal services in the field of notary to people who are unable."¹⁶This article shows that poor people can be provided with notarial services free of charge.

¹⁴Sudikno Mertokusumo, (2014), *Penemuan Hukum Sebuah Pengantar*, Edisi Revisi, Yogyakarta : Cahaya Atma Pustaka. p. 141.

¹⁵Yuriz, (2016), " Analisa Hukum Atas Perbedaan Bentuk Keterangan Waris Yang Dibuat Dalam Praktek Notaris Di Kota Medan", *Jurnal USU*, Vol 13, p. 141, <https://repositori.usu.ac.id/handle/123456789/423> accessed on January 20, 2025, at 11.30

¹⁶Article 37 paragraph (1) of the Notary Position Law

The provision of free legal services in the field of notary by a Notary is based on the belief because of the assumption that initially arises based on the soul of humanity, so that from this assessment the Notary can make a decision to provide free legal services. And also the client's openness to the Notary because of the honesty expressed by the client regarding the inability to pay the honorarium for a legal service that he needs.

A Notary in carrying out his/her job duties must have professional skills in the legal field and must also be based on high responsibility and morals as well as implementation of his/her job duties as well as values and ethics, so that he/she can carry out his/her job duties in accordance with legal provisions and the interests of the community.

The profession of a Notary as a public official in providing social services in the field of notary can also be provided free of charge, especially to people who are classified as underprivileged. The explanation regarding the requirements for obtaining free services from a Notary is not regulated in detail in the Notary Law, so its implementation depends on the Notary concerned.

It is natural for the person appearing or client to expect to receive service, in this case in the form of making an authentic deed that has legal certainty from a notary, but on the other hand, until now the rules regarding notary fees do not have a definite amount or proportion, but are only determined based on the sociological value and economic value of each deed with a maximum limit preceded by the words "largest" and "does not exceed".

Based on the above regulations, according to Notary Lia Amalia, SH, regarding the provision of free legal services, it is not necessary to provide the rates determined by law, it all depends on the policy of each Notary.¹⁷Notary Lia Amalia, SH also said that she sincerely provides honorariums to the poor regarding the creation of legal products that are related to social and religious service activities. Notaries also do not differentiate between providing facilities with clients who are able or unable so that there is no discrimination. According to Notary Lia Amalia, the obstacle to the implementation of free services is because the provisions of Article 37 of the UUJN do not explain in detail the characteristics of the poor and what legal assistance can be provided and there are still many stigmas in the general public who consider all matters related to Notaries to require huge costs and there are

¹⁷Based on an interview with Lia Amalia, Notary of Cirebon City, January 22, 2025

still many people who do not know that there are free social services in the notary field.

In providing legal services voluntarily also creates a dilemma for Notaries, on the one hand they want to free their services but on the other hand there is an obligation that must be paid by the client, namely the payment of Non-Tax State Revenue also known as (PNBP). Because in practice in the field PNBP does not recognize the economic situation of the person.

Analyzing and providing solutions to overcome obstacles in social service problems by Notaries is the first solution by conducting socialization with the Regional Management of the Indonesian Notary Association (INI) to the community so that the community no longer considers notary fees high and informs them that there are social services in notary services. Although the regulation of article 37 of the UUJN is still gray and does not explain the criteria for poor people, according to Notary Lia Amalia, this is also not a barrier, because basically Notaries do all of that based on humanitarian factors without any coercion from anywhere.

4. Conclusion

About Implementation of the obligations and responsibilities of notaries in providing social services according to their positions in the Cirebon City area, the implementation of the role of Notaries is manifested in the form of social responsibility to provide legal services professionally and without discrimination to all levels of society, including the less fortunate. Based on Articles 36 and 37 of the Notary Law (UUJN) and the Notary Code of Ethics, notaries are required to provide free legal assistance to people who are financially disadvantaged. In addition, this social service is also developed at the Lia Amalia Notary Office in Cirebon City including services for religious, social, humanitarian, and foundation activities. The mechanism for providing legal assistance at the Lia Amalia Notary Office in Cirebon City is guided by applicable laws and regulations such as UUJN, Law on Legal Aid No. 16 of 2011 and its implementing regulations. In providing services, Notaries are required to remain professional, explain obstacles to clients if it is not possible to provide free services and ensure equal treatment between clients who are financially capable and unable according to the principles of humanitarian values. As a form of service to the community, the notary profession at the Lia Amalia Notary Office in Cirebon City is carried out with a selfless attitude for the sake of devotion to the public interest, maintaining a balance between quality service and implementing compliance with applicable legal regulations. Regarding Obstacles and Solutions regarding the obligations and responsibilities of notaries in providing social services according to their positions in the Cirebon City

Area, legal services in the notary field are needed by all groups of society, both those who are able and those who are unable. Notaries have an obligation to provide free legal services to the underprivileged, as regulated in Article 37 of the Notary Law (UUJN). However, there are no detailed regulations regarding the criteria for underprivileged communities and the types of legal assistance provided in the UUJN so that the implementation of this social service depends on the discretion of each notary. Obstacles in the implementation of the provision of free legal services at the Lia Amalia Notary Office in Cirebon City include the lack of socialization and information to the community, the stigma of the community regarding notary service fees, and the obligation to pay PNBPN that cannot be waived. However, the humanitarian factor is the main foundation for notaries to provide selfless legal services so that notarial services can be carried out according to their duties with responsibility, professionalism, and high ethics for the benefit of the community. Solutions to overcome these obstacles include increasing socialization to the community through the Regional Management of the Indonesian Notary Association (INI) and providing education that there are social services in the notary field that are carried out without discrimination. In implementing social services for Notaries according to their positions, the role of social forces, law-making institutions and law enforcement is important. Thus, coordination is needed between all relevant parties to ensure that the provision of notary services runs according to the rules and has a positive impact on the community. Regarding the Example of a Foundation Deed of Establishment, a Foundation is basically a non-profit legal entity consisting of assets that are separated and allocated for social, religious, and humanitarian purposes. Foundations play an important role in various aspects of community life, such as social, education, culture, environment, and humanity, with the aim of serving the public interest, not certain individuals or groups. The establishment of a foundation is realized through a notarial deed in Indonesian or through a will and obtains legal entity status after being approved by the Ministry of Law and Human Rights of the Republic of Indonesia. The legality of this deed of establishment is important to increase the credibility of the foundation, build trust among donors, service recipients and other parties involved. The existence of a foundation is a vehicle to support social activities with trust based on legal aspects and a valid deed of establishment in supporting the social function of the foundation in society.

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